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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Assessment and Collection) MD Docket No. 95-3
of Regulatory Fees for)
Fiscal Year 1995)
)

**COMMENTS IN RESPONSE TO
NOTICE OF PROPOSED RULEMAKING**

The Wireless Cable Association International, Inc. ("WCAI"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its initial comments in response to the *Notice of Proposed Rule Making* ("Notice")¹ commencing this proceeding.

WCAI is the trade association of the wireless cable industry. Its members include the operators of virtually every wireless cable system in the United States, as well as licensees in the various services that provide transmission capacity to wireless cable systems. Wireless cable systems typically utilize three to five fixed satellite receive-only earth station antennas that are 3.2 meters to 5 meters in diameter ("small TVROs") for the purpose of receiving satellite-distributed video programming at their wireless cable system headends. As such, WCAI has a vital interest in the *Notice* which proposes to increase dramatically the regulatory

¹*Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Notice of Proposed Rulemaking*, FCC 95-14, MD Docket 95-3 (rel. Jan. 12, 1995) [hereinafter cited as the "Notice"].

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fees for licensees of small TVROs. Thus, WCAI has a vital interest in the outcome of this proceeding.

In passing the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), Congress amended Section 9 of the Communications Act of 1934 to authorize the Commission to assess annual regulatory fees on Commission licensees.² Regulatory fees are assessed for the limited purposes of recovering costs for specific regulatory activities of the Commission, namely, "enforcement activities, policy and rulemaking activities, user information services, and international activities."³ In the Budget Act, Congress established a Schedule of Regulatory Fees for Fiscal Year 1994 ("FY 1994"), which was to be used as the basis for the Commission's regulatory fees assessments.⁴ The initial Schedule of Regulatory Fees assessed an annual regulatory fee for earth station antennas of less than nine meters of \$0.06 per antenna with a minimum payment of \$6.00 per call sign.

By its recent *Notice*, the Commission proposes to adopt a new Schedule of Regulatory Fees for Fiscal Year 1995 ("FY 1995"). The proposed FY 1995 fees are, in the Commission's own words, "significantly higher" than those assessed in FY 1994.⁵ That characterization, however, hardly conveys the impact of an increase of several thousand percent in regulatory fees for licensees of small TVROs.

²See Pub. Law 103-66, 103rd Cong., 107 Stat. 312, *codified at* 47 U.S.C. §159.

³47 U.S.C. §159(a)(1).

⁴47 U.S.C. §159(g).

⁵*Notice*, at ¶ 3.

In the *Notice*, the Commission proposes to increase the regulatory fees for registrants of small TVROs from the current rate of \$6.00 per call sign (for up to 100 antennas)⁶ to a flat \$120 per meter.⁷ Thus, a wireless cable operator utilizing five registered TVROs of five meters each must pay an annual user fee of \$3,000.00. This amounts to almost a five hundred-fold increase above the fee set by Congress only one and a half years ago.

This increase raises the regulatory fees for small TVROs to a level wholly disproportionate to the benefits conferred by the Commission on TVRO registrants. The WCAI recognizes that the Commission is being required to recover \$116,400,000, which is an amount 93% higher than the amount that Congress required the Commission to raise last year.⁸ However, the proposed increase for small TVROs is well in excess of the adjustment that Congress intended when it authorized the Commission to levy regulatory fees. Indeed, Congress mandated that adjustments to its initial Schedule of Regulatory Fees “take into account factors that are reasonably related to the benefits provided to the payor of the fee ...”⁹ Registration of a TVRO offers an extremely limited benefit to the TVRO registrant -- placement on a listing of those entitled to interference protection from terrestrial microwave stations.¹⁰ As far as TVROs are concerned, then, the Commission’s registration process

⁶See 47 C.F.R. §1.1154 (1994).

⁷See *Notice* at ¶¶ 49-51.

⁸*Notice*, at ¶3.

⁹47 U.S.C. §§159(b)(1)(A) (emphasis supplied); *see also* 47 U.S.C. § 159(b)(3).

¹⁰See 47 C.F.R. §25.131(b).

serves as little more than a bulletin board. And soon to be an expensive one at that. The benefits that a wireless cable operator derives from registering a TVRO with the Commission are hardly related to the proposed regulatory fee.

Further, Congress intended that revisions of the Schedule of Regulatory Fees were to be related to the costs of providing regulatory benefits to licensees.¹¹ The costs of enforcement, policy and rulemaking, and international activities related to small TVROs would appear to be negligible at best. Certainly, the costs associated with small TVROs pale in comparison to the costs associated with the regulation of transmitting satellite earth stations. Yet, the proposed Schedule of Regulatory Fees imposes on transmitting satellite earth stations a regulatory fee barely greater than that imposed on small TVROs.¹²

Small TVROs are an important factor in allowing wireless cable to provide low-cost service to consumers. The Commission has recognized that "one of the most promising sources of multichannel competition in the local market is . . . 'wireless cable'," ¹³ and that "the public interest is better served by competition" to wired cable.¹⁴ Just last week, the

¹¹See H.R. Rept. 102-207, at 17, *as incorporated in* H.R. Conf. Rep. No. 103-213, 103rd Cong., 2d Sess. 499, *reprinted in* 1993 U.S. Code Cong. & Admin. News 378, 1188.

¹²See *Notice*, at ¶ 50 (proposing a flat regulatory fee of \$185 per meter for transmit/receive and transmit only earth stations).

¹³*Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, 5 FCC Rcd 362, 367 (1990).

¹⁴*Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, *Notice of Proposed Rulemaking*, 9 FCC Rcd 7665, 7666 (1994).

Commission recognized that “the emerging wireless cable industry is less likely to successfully compete with cable if subscribers cannot enjoy the highest quality reception reasonably possible.”¹⁵ Interference to reception by a wireless cable operator’s small TVRO will compromise that operator’s ability to provide the requisite high quality service. By implementing such a radical hike in its regulatory fees, the Commission forces each operator to make a Hobson’s choice -- either forego TVRO registration and risk interference, or pay outlandish regulatory fees that erode wireless cable’s position as a low-cost provider of multichannel video services to the public.

¹⁵*Amendment of Part 74 of the Commission’s Rules with regard to the Instructional Television Fixed Service*, FCC 95-51, MM Docket No. 93-24, at ¶ 52 (rel. Feb. 7, 1995).

For the foregoing reasons, WCAI respectfully requests that the Commission revise the rules proposed in the *Notice* to reduce the regulatory fees imposed on small TVROs, increasing the fees imposed on transmitting earth stations, if necessary. By adjusting the proposed Schedule of Regulatory Fees to reflect more closely the Commission's costs associated with the regulation of TVROs, the Commission will assure that wireless cable will remain a viable low-cost competitor to other forms of multichannel video services.

Respectfully submitted,

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